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SENATE CS FOR CS FOR HOUSE BILL NO. 59(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/30/03

Referred: Rules

Sponsor(s): REPRESENTATIVES HOLM, Heinze, Gara, Lynn

SENATORS Guess, Dyson, Gary Stevens, Seekins, Wagoner, Lincoln, French, Ellis, Elton, Taylor, Ben Stevens, Cowdery, Wilken

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the evaluation and cleanup of sites where certain controlled**
2 **substances may have been manufactured or stored; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 PURPOSE. The purpose of this Act is to provide a just, equitable, and practicable
7 method, to be cumulative with and in addition to any other remedy provided by law, whereby
8 property that endangers the life, safety, or welfare of the general public or occupants of the
9 property because of toxic chemical contamination that may result from illegal drug
10 manufacturing may be required to be decontaminated or vacated and secured against use.

11 * **Sec. 2.** AS 46.03 is amended by adding new sections to read:

Article 7A. Cleanup of Illegal Drug Sites.

12 **Sec. 46.03.500. Notice of illegal drug manufacturing site.** (a) When a law
13 enforcement officer or team of law enforcement officers, qualified under federal
14

1 regulations to investigate and dismantle illegal drug manufacturing sites, determines
 2 that a site constitutes an illegal drug manufacturing site, the primary law enforcement
 3 agency that conducted the investigation shall notify the owner of the property, the
 4 occupants and users of the property, and the department that the determination has
 5 been made. The owner of the property may appeal the determination to the superior
 6 court for review of whether the determination was made in compliance with this
 7 subsection. In the appeal, the burden of proving by a preponderance of the evidence
 8 that the determination was made in compliance with this subsection is on the primary
 9 law enforcement agency that conducted the investigation.

10 (b) The notice to the property owner required under (a) of this section shall be
 11 given in a manner that is consistent with the Alaska Rules of Civil Procedure for the
 12 service of process in a civil action in this state and must include the following
 13 information:

14 (1) the parcel identification number and legal description of the
 15 property where the site is located;

16 (2) a statement of the determination made by the primary law
 17 enforcement agency that the site was an illegal drug manufacturing site and the
 18 findings that formed the basis for the determination;

19 (3) a citation to, and short summary of, AS 46.03.510, which restricts
 20 transfer and occupancy of the site until it is determined to be fit for use; and

21 (4) the following information, which shall be provided to the primary
 22 law enforcement agency by the department:

23 (A) a copy of the standards contained in regulations adopted
 24 under AS 46.03.530 that determine whether the property is fit for use;

25 (B) a copy of the sampling and testing procedures established
 26 under AS 46.03.520(b) and a copy of the list of laboratories maintained under
 27 AS 46.03.520(c) that must be used for determining whether the property is fit
 28 for use; and

29 (C) a copy of the guidelines for decontamination established by
 30 the department under AS 46.03.540(b).

31 (c) The notice to the department required under (a) of this section must

1 include

2 (1) the parcel identification number and legal description of the
3 property where the site is located;

4 (2) a statement of the determination made by the primary law
5 enforcement agency that the site was an illegal drug manufacturing site and the
6 findings that formed the basis for the determination; and

7 (3) the name and mailing address of the person who owns the property
8 where the site is located.

9 (d) The notice required under (a) of this section for the occupants and users of
10 the property shall be accomplished by immediate posting of the property with a notice
11 that includes the location of the property, the information described in (b)(2) and (3) of
12 this section, and a statement that the property may pose a substantial risk of physical
13 harm to persons who occupy or use the property. For purposes of posting of the notice
14 to the occupants and users of the property required by this subsection, the posting shall
15 be made, for property that is

16 (1) a single family dwelling, at the main entryway of the property; and

17 (2) other than a single family dwelling and for a hotel, motel, public
18 inn, or similar place of public accommodation that provides lodging, at the door of the
19 unit that is the site that constitutes the illegal drug manufacturing site.

20 (e) If a person other than the owner, such as a property manager or rental
21 agency, is authorized to let others use or occupy property for which an owner has
22 received a notice under (a) of this section or is authorized to transfer, sell, lease, or
23 rent the property to others, the owner of the property shall communicate the substance
24 of the notice to that person within four days after receiving the notice.

25 **Sec. 46.03.510. Restrictions on property.** (a) Until determined to be fit for
26 use under AS 46.03.550, the property for which a notice has been issued under
27 AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person
28 except as provided in (b) of this section, and a person may not use or occupy the
29 property at any time after the fourth day following the day on which the property was
30 posted with the notice required under AS 46.03.500(d), except as necessary for
31 sampling, testing, or decontamination under AS 46.03.520 and 46.03.540. An oral or

1 written contract that would transfer, sell, lease, rent, or otherwise allow the use of the
 2 property in violation of this subsection is voidable between the parties at the option of
 3 the purchaser, transferee, user, lessee, or renter. However, this subsection does not

4 (1) make voidable a promissory note or other evidence of indebtedness
 5 or a mortgage, trust deed, or other security interest securing the promissory note or
 6 evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust
 7 deed, or other security interest was given to a person other than the person
 8 transferring, selling, using, leasing, or renting the property to induce the person to
 9 finance the transfer, sale, use, leasing, or rental of the property;

10 (2) make voidable a lease or rental agreement between the property
 11 owner and the person who caused the property to be contaminated and determined
 12 unfit for use; or

13 (3) impair obligations or duties required to be performed on
 14 termination of a contract, as required by the contract, such as payment of damages or
 15 return of refundable deposits.

16 (b) Notwithstanding (a) of this section, property covered by (a) of this section
 17 may be transferred or sold if full written disclosure is made to the prospective
 18 transferee or purchaser that the property has been determined to be an illegal drug
 19 manufacturing site and the property has not been determined to be fit for use. The
 20 disclosure shall be attached to the earnest money receipt, if any, and shall accompany
 21 the transfer or sale document. The disclosure is not considered to be part of the
 22 transfer or sale document, however, and may not be recorded. The property shall
 23 continue to be subject to the restrictions in (a) of this section after transfer or sale
 24 under this subsection.

25 (c) A person who knowingly transfers, sells, leases, or rents property to
 26 another, knowingly allows another to use or occupy property, or, being the owner of
 27 property, knowingly occupies or uses the property, in violation of this section is guilty
 28 of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in
 29 AS 11.81.900(a).

30 (d) It is an affirmative defense to a prosecution under (c) of this section for
 31 allowing another to use or occupy the property that the defendant or an agent of the

1 defendant, within four days after receiving a notice under AS 46.03.500, filed an
2 appropriate civil action to remove the user or occupier from the property for which the
3 notice was received.

4 **Sec. 46.03.520. Sampling and testing procedures.** (a) If the owner of the
5 property for which notice was received under AS 46.03.500(b) desires to determine if
6 the property is fit for use, the owner shall cause the site to be sampled and tested for
7 the substances covered in regulations adopted under AS 46.03.530, using the
8 procedures and laboratory services specified under (b) and (c) of this section. The
9 property owner shall inform the laboratory used for sampling or testing under this
10 subsection that the sampling and testing are related to property that has been
11 determined to be an illegal drug manufacturing site.

12 (b) The department shall establish procedures for sampling and testing
13 property that may have been an illegal drug manufacturing site.

14 (c) The department shall establish and maintain a list of laboratories in the
15 state that have notified the department that they have the capacity to perform the
16 sampling and testing procedures and that they wish to be on the list maintained under
17 this subsection. A laboratory may not be included on the list unless the laboratory
18 agrees to send the department a copy of test results related to properties whose owners
19 have informed the laboratory that the test results are for property that has been
20 determined to be an illegal drug manufacturing site.

21 **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a
22 notice was received under AS 46.03.500(b) is not fit for use if sampling and testing of
23 the property under AS 46.03.520 shows the presence of substances for which the
24 department has set a limit under (b) of this section.

25 (b) The Department of Public Safety shall annually submit a list of substances
26 to the Department of Environmental Conservation. The department shall adopt
27 regulations that set the limit for each substance specified by the Department of Public
28 Safety for purposes of determining whether the property for which a notice was
29 received under AS 46.03.500 is fit for use. The department may also determine
30 whether there are other substances associated with illegal drug manufacturing sites
31 that may pose a substantial risk of harm to persons who occupy or use the site or to

1 public health and may adopt regulations that set limits for those substances for the
 2 purposes of determining whether the property for which notice was received under
 3 AS 46.03.500 is fit for use.

4 **Sec. 46.03.540. Decontamination requirements.** (a) If the owner desires to
 5 decontaminate the property for which a notice has been issued under AS 46.03.500,
 6 the owner shall follow the guidelines established by the department under (b) of this
 7 section.

8 (b) The department shall establish guidelines for decontamination of sites that
 9 are determined to be unfit for use under AS 46.03.530. The department shall provide
 10 a copy of the guidelines to any person who requests a copy.

11 **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been
 12 issued under AS 46.03.500 shall be determined by the department to be fit for use if
 13 the owner certifies to the department under penalty of unsworn falsification that

14 (1) based on sampling and testing procedures established by the
 15 department under AS 46.03.520(b) and performed by laboratories that are on the list
 16 maintained by the department under AS 46.03.520(c), the limits on substances
 17 specified in regulations adopted under AS 46.03.530 are not exceeded on the property;

18 (2) if the property was ever sampled and tested under AS 46.03.520
 19 and the test results showed the property to be unfit for use under AS 46.03.530,
 20 decontamination procedures were performed in accordance with the guidelines
 21 established under AS 46.03.540(b) and the requirements of (1) of this subsection have
 22 been met; or

23 (3) a court has held that the determination that the property was an
 24 illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

25 (b) The department shall maintain a list of properties for which the department
 26 has received notice under AS 46.03.500(c). When the department determines under
 27 (a) of this section that a property on the list is fit for use, the department shall remove
 28 the property from the list and notify the owner of the property that the property is fit
 29 for use. On request, the department shall give a copy of the list maintained under this
 30 section to any person who requests the list.

31 **Sec. 46.03.560. Securing the property.** The owner of property for which a

1 notice was received under AS 46.03.500(b) shall ensure that the property is vacated
2 and secured against use

3 (1) within four days after receiving the notice if the owner does not test
4 the property under AS 46.03.520 within four days after receiving the notice; or

5 (2) within four days after receiving the test results if the owner tests
6 the property within four days after receiving the notice, the test shows the presence of
7 a substance that exceeds the limits set in regulations adopted under AS 46.03.530, and
8 the owner does not begin decontamination procedures under AS 46.03.540 within four
9 days after receiving the test results.

10 **Sec. 46.03.570. Duties of the department; regulations.** The department
11 shall adopt regulations implementing AS 46.03.500 - 46.03.599.

12 **Sec. 46.03.599. Definitions.** In AS 46.03.500 - 46.03.599,

13 (1) "illegal drug manufacturing site" means property on which there is
14 reasonable cause to suspect contamination with chemicals associated with the
15 manufacturing of a controlled substance and where

16 (A) activity involving the unauthorized manufacture of a
17 controlled substance listed on schedule I or II in AS 11.71 or a precursor
18 chemical or necessary chemical for the substances has occurred; or

19 (B) there are kept, stored, or located any of the devices,
20 equipment, things, or substances used for the unauthorized manufacture of a
21 controlled substance listed on schedule I or II in AS 11.71;

22 (2) "site" means an illegal drug manufacturing site.

23 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 REGULATIONS. The Department of Environmental Conservation may immediately
26 begin to develop and adopt regulations to implement this Act. The regulations take effect
27 under AS 44.62 (Administrative Procedure Act).

28 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS. The lieutenant
31 governor shall certify to the revisor of statutes the effective date of the initial regulations

1 adopted by the Department of Environmental Conservation under sec. 3 of this Act.

2 * **Sec. 5.** Sections 1 and 2 of this Act take effect on the effective date of the initial
3 regulations adopted by the Department of Environmental Conservation under sec. 3 of this
4 Act.

5 * **Sec. 6.** Sections 3 and 4 of this Act take effect immediately under AS 01.10.070(c).